

**FOR THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**TERRY HARRIS and  
DOROTHY WATFORD,**

**Plaintiffs,**

**VS.**

**CASE NO.: 2:05-cv-01083-WKW**

**JOSEPH BORG,**

## Defendants.

## **PLAINTIFFS' RESPONSE TO SHOW-CAUSE ORDER**

**COME NOW** the plaintiffs, through their undersigned counsel, and respond to the show-cause order as follows:

1. On October 31, 2006, this court issued an order requiring plaintiffs to file an amended complaint on or before November 9, 2006.
2. Also included in the order was notice of a status conference on November 13, 2006.
3. Plaintiffs' counsel timely filed the Amended Complaint, but inadvertently failed to calendar the date of the status conference on his calendar. Plaintiffs' counsel instead appeared in the Circuit Court of Jefferson County, Alabama, the morning of the hearing.
4. At the time of scheduled status conference, plaintiffs' counsel was contacted by a court personnel, at which time plaintiffs' counsel requested to participate in the status conference telephonically. Plaintiffs' counsel resides and practices law more than 90

miles from the place of the hearing.

5. Plaintiffs' counsel participation by telephone would not have prejudiced either party.

6. A new status conference has been rescheduled and the rescheduling does not pose a hardship or work prejudice to either party.

7. Defense counsel acknowledges in his Affidavit that "the amount of time that was wasted because of plaintiffs' attorney's failure to attend would be less than the total time spent. The wasted time includes the time spent attending the hearing [approximately 0.5 hours] and approximately two hours of time that would be needed to re-familiarize counsel before the re-scheduled hearing...."

8. Plaintiff should not be responsible for a future amount of time that has not occurred, and should not be responsible for time spent in preparation of defendant's Motion to Dismiss.

9. By this filing, the undersigned counsel apologizes to the court and defense counsel for any inconvenience.

Respectfully submitted,

/s/ Henry L. Penick  
Henry L. Penick  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served this the 27th day of November, 2006, by placing same in the United States Mail, first-class postage prepaid and properly addressed as follows:

Bruce Downey  
Cappell & Howard, P.C.  
150 South Perry Street  
P.O. Box 2069  
Montgomery, AL 36102-2069

/s/ Henry L. Penick